

TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS
Regular Session

Date: MARCH 10, 2008

AGENDA

7:30 p.m. – Roll Call

Motion to accept minutes of **January 28, 2008** meetings as written.

PRELIMINARY MEETINGS:

1. **SIGN LANGUAGE (for New Windsor Business Park) (08-09)** Request for 14 ft. 9" Width for proposed wall sign at 460 Temple Hill Road in a PI Zone **(4-2-16.42)**
2. **AVAN REALTY, LLC (Haig Sarkissian) (for HZ Development Co.) (08-10)** Request for one (1) additional Freestanding Sign at 140 Executive Drive in a PI Zone **(4-3-17.6)**
3. **DEBORAH MENKENS (08-11)** Request for One (1) Additional Horse and; variance to permit three (3) horses to be maintained 20 ft. from the side, rear and front property lines in an R-1 Zone **(52-1-79.1)**

(NEXT MEETING – MARCH 24, 2008)

Received
3/10/08

March 10, 2008

1

TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS
MARCH 10, 2008

MEMBERS PRESENT: PAT TORPEY, ACTING CHAIRMAN
KATHLEEN LOCEY
FRANCIS BEDETTI, JR.

ALSO PRESENT: MICHAEL BABCOCK
BUILDING INSPECTOR

ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

MYRA MASON
ZONING BOARD SECRETARY

ABSENT: MICHAEL KANE, CHAIRMAN
KIMBERLY VOLPE

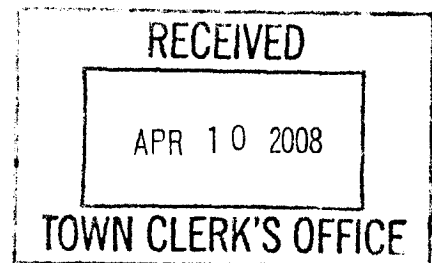
REGULAR_MEETING

MR. TORPEY: I'd like to call to order the March 10, 2008 meeting of the New Windsor Zoning Board of Appeals meeting.

APPROVAL_OF_MINUTES_OF_JANUARY_28,_2008

MR. TORPEY: Motion to accept the minutes of January 28, 2008?

MR. BEDETTI: So moved.



March 10, 2008

2

MS. LOCEY: I'll second that motion.

ROLL CALL

MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE

PRELIMINARY_MEETINGS:

SIGN_LANGUAGE_(FOR_NEW_WINDSOR_BUSINESS_PARK)_(08-09)

MR. BABCOCK: For the record, the attorney's not here tonight so you should make sure that you and the individuals feel comfortable moving forward. There's only two items on the agenda, both of them are preliminary meetings, though basically would be no decisions made tonight, so if you feel comfortable with that, I'm not so sure what you should do but that's what I would suggest.

MR. TORPEY: I have to agree with you, Mike.

MS. MASON: Well, there's a decision to have a public hearing or not, right?

MR. BEDETTI: We have enough to vote on that.

MR. TORPEY: So the Sign Language is obviously not here so we'll move right to the next one.

March 10, 2008

4

DEBORAH_MENKENS_(08-11)

MR. TORPEY: Request for one additional horse and variance to permit three horses to be maintained 20 foot from the side, rear and front property lines.

Ms. Deborah Menkens appeared before the board for this proposal.

MR. TORPEY: You know the routine, right? Do the name and address.

MS. MENKENS: Deborah Menkens, 1 Sean Court, Rock Tavern, New York 12575.

MR. TORPEY: What would you like to do?

MS. MENKENS: Receive a variance for an additional horse and receive a variance for the fence line that's existing to house the horses.

MR. TORPEY: So the existing line fence right now is red?

MS. MENKENS: Yes, I have a big picture, do you want me to put it up?

MR. TORPEY: Yes.

MR. BABCOCK: Mr. Chairman, just to clarify a little bit the existing fence that she's talking about--

MS. MENKENS: Is the brown one.

MR. BABCOCK: --is a fence that's permitted by law and she's allowed to have as a normal course having a fence on her property. What the law says is that a fence that you use to restrain a horse is 75 feet from the property line. This particular fence doesn't meet all that criteria, that's why she's here tonight.

MR. TORPEY: So the brown fence is the existing fence and the red is the electric fence that has to be stepped in?

MR. BABCOCK: That's correct. The red fence is the electric fence that she's put up on a, well, it's a temporary basis so that she can maintain the horses 75 feet from the property line with that fence she would like to take that down which would allow the horses to roam and have a little more area to roam.

MS. LOCEY: What are the green handwritten--

MS. MENKENS: Those are trails that we're working on.

MS. LOCEY: Those are not proposed locations where you want to move the fence?

MS. MENKENS: No, no, fence will be moved.

MS. LOCEY: So you want the fence to remain where the brown line is?

MS. MENKENS: Right, the brown fence will remain where it is and I'd like to take the red fence off.

MS. LOCEY: And the red fence you need to keep the horses 75 feet from your property line, if you didn't have horses the brown line off the property line is within the zoning?

MS. MENKENS: Yes.

MS. LOCEY: So you're looking for a variance to allow your horses less than 75 feet from your property line?

MS. MENKENS: Yes.

MS. LOCEY: Is that correct?

MS. MENKENS: Yes, it's actually 25 feet on the west side of the property which is right here and it's 35 feet on the north side of the property which is right here and 35 feet off the property line then this corner one's 36 feet off the property line and this corner is 78 feet off the property line and this fence line here is 56 feet off the property line.

MS. LOCEY: Okay.

MR. BEDETTI: Those dimensions that you just read off don't appear on the request, it must be is it because the lines are not parallel to the property lines?

MS. MENKENS: You'll have to ask Mr. Babcock, I don't know why, I didn't ask for a permit 20 feet off the property line, I wrote it out as 25 feet from the west side of the property, 35 feet on the north side of the property line, 36 to 78 east of the property line and 56 feet.

MS. LOCEY: Just to restate, make sure I understand this correctly, if there were no horses involved, the brown line indicates the location of a fence that's legal as far as being--

MS. MENKENS: Yes, I already have a permit for that, yes, there's an existing fence.

MR. BABCOCK: It's a legal fence.

MS. LOCEY: The only reason that she has the red electric fence is to keep the horses 75 feet off the property line?

MR. BABCOCK: That's correct.

MS. LOCEY: And she wants the horses to be able to go as far as the existing brown fence?

MR. BABCOCK: Yeah, the brown fence is not legal for maintaining the horses.

MS. LOCEY: But it is just to fence your area.

MR. BABCOCK: Just as you could put up a fence for looks, to keep the neighbors out.

MS. LOCEY: I wanted to make sure I understood that correctly.

MR. TORPEY: How long has it been since the last application was denied?

MR. BABCOCK: It was April.

MS. MENKENS: Ninth.

MR. BABCOCK: April 9, 2007.

MS. MENKENS: I want to come back every year.

MS. LOCEY: That was 11 months ago so and she needs what, six months before she can come back for another application?

MS. MASON: Yes.

MR. TORPEY: And the six months is up, right?

MR. BABCOCK: That's correct.

MR. BEDETTI: Can I ask her a question? Now you're requesting a variance to get a third horse?

MS. MENKENS: I have two existing on the property, I'd like to bring a third one home.

MR. BEDETTI: And the reason for bringing another one

in is?

MR. BEDETTI: Originally my herd was six horses and I gave three away and now I'm down to two that I keep on the property and one that I'm having boarded. The reason for the horses, each one of us in the family rides and also by bringing the third horse in it will allow me to take one horse off the property cause right now my horses are herd bound which means I can't remove both without taking both off the property.

MR. TORPEY: So you're saying--

MS. MENKENS: One will be off the property, my youngest son shows one of the horses.

MR. TORPEY: But there will be three horses at one time?

MS. MENKENS: They'll be sleeping there at night, yes.

MS. LOCEY: On your application just a clarification for myself, there's a lot of verbiage regarding your request to house a third horse on your property but I don't see anything about the fence, am I just not reading something?

MR. BABCOCK: Yeah, on the denial up on the top it says 300-13 accessory uses not more than two horses and then--

MS. LOCEY: On the 75 feet, okay.

MR. BABCOCK: Right.

(Whereupon, Mr. Krieger entered the room.)

MR. BEDETTI: So the new location that you're going to, that you're proposing the 20 feet from the property line is that 20 feet exactly 20 feet all the way around

or are there other dimensions?

MR. BABCOCK: It varies. Do you have the map, remember the map that actually showed that would clarify it there was like a survey I think?

MS. MENKENS: You have it because I didn't bring it with me. All right, I'll go through it again. This is my home here and it's like an L shape right here on this property, this is the yellow is the property line, this fence right here is 25 feet from the property line.

MR. BEDETTI: And that one you're pointing to?

MS. MENKENS: That's the top one, the brown line we're talking about the brown.

MR. BEDETTI: Go ahead.

MS. MENKENS: This back one is 36 feet off the property line, bottom corner here is 36, and then as it gets towards Sean Court this corner fence line is 75 feet, this one here is 78 feet, 36 feet, 78 feet.

MR. BEDETTI: Seventy-eight feet from?

MS. MENKENS: From the property line.

MR. BEDETTI: From the back line and how far is it from the line?

MS. MENKENS: And this line here it's 56 feet from the property line.

MR. BEDETTI: And the other one's what?

MS. MENKENS: This line here is 56.

MR. BEDETTI: And the one on the bottom?

MS. MENKENS: Seventy-eight and 36.

MR. BEDETTI: When you say 78 you're talking about the whole length?

MS. MENKENS: Starts at 78 and goes to 36.

MR. TORPEY: This picture is showing what you want, not what's there right now, right?

MR. BABCOCK: No, it's there, this wood fence is there.

MR. TORPEY: I know the fences are there but not in this category on--

MS. LOCEY: Yes, they are, the brown fence it's legal if there were no horses, it's within the number of feet from the property line a fence.

MR. TORPEY: I remember seeing it all but--

MS. LOCEY: But a horse has to be 75 feet from the property line.

MR. BABCOCK: This is the fence.

MR. TORPEY: Fence is in.

MR. BABCOCK: This fence is there, this fence can legally be there, just as a fence on your property cannot be used to maintain a horse because the horse has to be 75 feet from the property line so she put this fence in, see this fence, the electric fence, I'm going to show you in a second, Barney, and that's maintaining the horses. Now she wants to take the electric fence down and let the horses go to this fence.

MS. LOCEY: Have a larger area.

MS. MENKENS: It's .6 more acres.

MR. BEDETTI: Now, the electric fence is 75 feet away?

MR. BABCOCK: That's correct.

MR. BEDETTI: So that's a legal one but you want to open it up?

MR. BABCOCK: Right.

MR. TORPEY: Put the electric fence on the brown fence--

MS. MENKENS: No, when I had the fence built it's cemented in and it's 54 inches.

MS. LOCEY: Just want to take down the interior, the electric fence is to give the horses room, more room to run?

MS. MENKENS: And bring the additional horse home.

MS. LOCEY: One is the variance for the horse fence, the other is for a third horse.

MR. TORPEY: Are there anymore questions?

MR. BEDETTI: Yeah, I do have one. Is there a place to house the horses, do you have a stable?

MS. MENKENS: Yeah, right here is a running shed, barn.

MR. TORPEY: Is that the long building?

MR. BEDETTI: Right.

MR. TORPEY: I think there's another one too.

MS. MENKENS: There are two of them put together.

MR. BEDETTI: To make the one long one?

MS. MENKENS: Yes and it has a ten foot overhang so when the inclement weather comes the horses have the opportunity of going under the overhang or into their stall and in the stalls they have automatic waterers so there's always constant water for them.

MR. BEDETTI: Now, is this a neighbor that cluster?

MS. MENKENS: Right here is Mr. Decker, here is Brittany Terrace Motor Home, we have a new neighbor here, we have Mr. Steel down here and we have a new neighbor down in this corner.

MR. TORPEY: Are they much happier that everything's grown up and growing now?

MS. MENKENS: Everything's gone.

MR. TORPEY: But new neighbors?

MS. MENKENS: I've got the kids playing with my children constantly, it's been a really nice change. I will have probably Mr. Decker objecting if we have a public meeting and I can explain that if you want me to.

MR. TORPEY: When the time comes. Anymore questions?

MR. BABCOCK: Mrs. Menkens, as far as Mr. Decker's concerned, if you feel that he's going to complain, why wouldn't you want to move the fence from his property a little farther? You're probably the closest to his house.

MS. MENKENS: Yeah, what happened originally when we moved into the neighborhood he had 75 feet at the

property that he thought was his and when we reclaimed the property he wasn't very happy with that. Also there's a drainage pipe that leeches into my property line that goes actually right into the paddock. My intentions were these trees that I have growing here the 16 foot evergreens we were planning on putting along the property line here to give him back his privacy. We haven't gotten to that point because I'm paying for board for a horse.

MR. BABCOCK: Okay.

MS. MENKENS: Also the horses only spend about five weeks in each paddock so if he does object I'd keep the horses in that one paddock, keep the 75 foot electric fence up.

MR. TORPEY: Anymore questions?

MR. BEDETTI: Other than the fact that you would like to have another horse there, what other reason would drive you to do this, I mean, to not stay within the bounds of the requirements for your property, stay with the two horses, especially if you know somebody is going to come in and complain about it? Is there any, is there some demand that you have this third horse other than you'd like to have it?

MS. MENKENS: My youngest child is a special needs child, my youngest son is a special needs child and because of a horses he's come along quite a bit. And in order for me to take his horse off the property I need to have the second horse to keep the other one company because they're herd bound right now at this point and I can't remove and we've tried removing a horse from the property and the other one just goes crazy, he just can't deal with the separation of the one horse. We all ride in our family, we ride as a family, we're close to the Stewart buffer zone so that all we have to do is walk down this road and we hit the

trails. This is a family activity that we have come to love and they are part of our family.

MR. BEDETTI: Okay, I mean, you're not doing trail rides or renting the horses out with the trail rides?

MS. MENKENS: Absolutely not, this is not a business.

MR. BEDETTI: That's what I was getting to, okay.

MS. MENKENS: This was supposed to be a family--

MR. BEDETTI: I got you, thank you.

MR. TORPEY: Anymore questions? I'll accept a motion.

MR. BEDETTI: I'll make a motion that we schedule a public hearing for Mrs. Menkens for her side yard variance and for an extra or third horse as requested.

MS. LOCEY: I'll second that motion.

ROLL CALL

MR. BEDETTI	AYE
MS. LOCEY	AYE
MR. TORPEY	AYE

March 10, 2008

15

AVAN_REALTY,_LLC

Cancelled by applicant.

DISCUSSION

MR. KRIEGER: I have a memo that I received from the Supervisor and I was asked to speak to it. Apparently, he had a, from what I'm told by the memo, he had a call from somebody identified as a town resident, I won't identify any further, I have no idea what it was about but or even whether it was this board or the planning board, but I think it is probably a good idea if I go through at this point the rules of personal inspection and so forth. As you are no doubt aware, both the state and local law say that a zoning board member is supposed to use his or her personal knowledge. If you go to look at the premises before the hearing, which I encourage you to do, you should and you rely in making your vote on anything that you have seen you should say so on the record. I went, I saw, and as a result of what I saw this is it. What you cannot do is rely on and recount what neighbors told you unless the neighbors are here for the applicant, the memo says cross examine, I would say counter or answer cause otherwise if it's just what neighbors have said it constitutes hearsay which even under the relaxed rules of the Zoning Board of Appeals is not admissible. So you can rely and should rely on what you see visiting the place. You cannot rely on what others have told you unless they're here to say so or unless they have submitted a letter to say so.

MR. TORPEY: Basically you can go out do an inspection, just look and move on.

MR. KRIEGER: Yes, and as a result of your inspection which and by the way this is a good idea to do that if as a result of your inspection you see something that affects your vote you should say so in the record, hey, I went and looked at the property and this is what I saw and this causes me to be concerned or not concerned or whatever that leads you to. But what you can't do is say I talked to somebody, talked to neighbors

usually is the phrase who said A or B or C because first of all, that's putting as I say impermissible hearsay in the record because they are not here to say so themselves or B, questioned about it and it makes you look like you're relying and voting on hearsay on what you have been told rather than what you have seen. So you are no longer using your own judgment, which is also what you're not supposed to be doing. So as I say I received this memo during this past week and with a request that both I and the planning board discuss it. I have no idea what they're going to do but I have just done what I think was required. Any questions?

MR. BEDETTI: I don't know if that had anything to do with the last meeting that we had but I did do an on-site inspection, I did comment on the neighbors' acceptance but they were affidavits signed by those neighbors, I mean, it was--

MR. KRIEGER: Affidavits were in the record, they were presented here too.

MR. BEDETTI: And I identified that I went to that place as well.

MR. KRIEGER: I don't see by the way that anything improper has been done. I suspect frankly that this unidentified conversation that the Supervisor had may be a disgruntled person who may not have correctly portrayed the facts as they actually occurred. That happens sometimes, people say what they want you to hear, not necessarily what happened and for what they think happened and what actually happened are often two different things. No, I don't think that anybody here has behaved incorrectly and I thought about that particular incident when I read the memo but I because of what you say it was backed up by the record, there were other things in the record that I didn't see where that was a problem. In any case it's just as far as I'm concerned it's a cautionary note for the future and

nothing more cause as I say I wasn't identified and complained or about, it was all pretty vague.

MR. BEDETTI: Like I said, I saw signed affidavits from the neighbors.

MR. KRIEGER: You're on perfectly solid ground because what you saw was supported and the usual custom those things are entered into the record, chairman reads them into the record so they're here to be answered, if anybody wants to answer it.

MS. LOCEY: What I was about to say if your good intentioned site visit which was fine because it was backed up by people who spoke up or submitted written statements but if you weren't cautioned that you really need to make your decision based on what you saw, not what neighbors told you. You might not realize and the next time say well, I heard from such and such a neighbor that they were opposed and if that neighbor's not here to say that on his or her own then you would, it's a fine line there, so I think it's just a cautionary memo.

MR. KRIEGER: Also I understand you go to look at the place and you get out and you look, there are, it's going to attract attention and there are people in the law referred to as vicious interlopers who come in, you don't have to ask them anything, they're happy to come over and give their own two cents which depending on person you may or may not find illuminating. Just when recounting put your vote on what you saw as opposed to what you heard and don't mean it one way or the other.

MR. TORPEY: We should go out and look at spots when there's a big situation going on like Mrs. A, you know what I mean?

MS. LOCEY: Mrs. Menkens?

MR. TORPEY: A lot of times these people come in, they're whining about it but we don't know until we go out there.

MR. KRIEGER: One of the things I've found by the way and this is a really a personal note but in years of looking at site plans, blueprints and so forth that what you see on the ground very often is very different the impression you get from what you see physically is different than what you see on a site map. And I particularly noticed and maybe it's just me but I have noticed that distances which seem to be a great distance on a map when I go look at the ground well it doesn't look far away anymore.

MR. TORPEY: Plus if you talk to people a lot of times they're mad at this neighbor.

MR. KRIEGER: It's not a question and a lot of times even if you don't talk to them they come up to you and you wind up listening and stuff that you can solicit just don't use that as a basis for voting. I went and I saw is precisely what you're supposed to be doing and precisely what should be in the record.

MR. TORPEY: Anymore questions?

MR. KRIEGER: Anybody else have any questions?

MR. TORPEY: Motion to adjourn?

MS. LOCEY: So moved.

MR. BEDETTI: Second it.

ROLL CALL

MR. BEDETTI	AYE
MS. LOCEY	AYE

March 10, 2008

20

MR. TORPEY

AYE

Respectfully Submitted By:

Frances Roth
Stenographer